

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Eugene Missinne, : Case No.

Plaintiff, : **NOTICE OF REMOVAL**

VS. :

Flex-N-Gate, :

**Defendant.** :

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Flex-N-Gate Nine Mile Road, LLC (incorrectly identified as “Flex-N-Gate”) (“Defendant”), files this Notice of Removal of this action from the Circuit Court for the County of Macomb, where it is now pending, to the United States District Court for the Eastern District of Michigan, Southern Division.

1. This action was commenced on April 2, 2021 by the filing of the Complaint in the Circuit Court of Macomb County, Michigan. The action is entitled *Eugene Missinne vs. Flex-N-Gate* and was assigned Case No. 2021-001220-CD on the Court's docket.

2. A courtesy copy of the Summons and Complaint was emailed to Mareeca Jordan, Human Resources Manager for Flex-N-Gate Nine Mile Road, LLC on April 8, 2021, but service has not yet been perfected. This Notice of Removal is being filed within 30 days after receipt by Defendant and is timely filed in accordance with 28 U.S.C. § 1446(b).

3. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship of the parties and the amount in controversy exceeds the sum of \$75,000.

4. According to the Complaint, Plaintiff is a citizen of the State of Michigan. (Complaint, ¶ 1.)

5. Defendant is not a citizen of Michigan. As a limited liability company, Defendant carries the citizenship of its members for purposes of diversity jurisdiction. *See Delay v. Rosenthal Collins Group, LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009).

6. Defendant Flex-N-Gate Nine Mile Road, LLC is a limited liability company that has a single member, Flex-N-Gate Michigan, LLC. (Owens Dec., ¶ 2.) Flex-N-Gate Michigan, LLC is a limited liability company that has a single member, K2TR Family Holdings 1, Corp. (“KFH1”), a South Dakota corporation with a principal place of business at 1306 East University Avenue, Urbana, Illinois. (Owens Dec., ¶ 3.)

7. The Complaint does not allege a particular sum or place a cap on damages; however, a fair reading of the Complaint demonstrates that the amount of the claims asserted more likely than not exceeds the \$75,000 jurisdictional minimum. Plaintiff seeks all damages to which he may be entitled, which might include lost wages, lost benefits and damages for emotional and mental distress. (Complaint, Prayer for Relief.)

8. Plaintiff was terminated on March 26, 2021 and filed his Complaint on April 2, 2021. At the time of his termination, Plaintiff’s base wage rate was \$16 per hour, and he was expected to work mandatory overtime when required. Assuming typical overtime, Plaintiff would likely be paid roughly \$36,000 per year. (Owens Dec., ¶ 4.) After 60 days of employment, Plaintiff would have been eligible to receive health insurance benefits, at a cost of approximately \$9,600

per year. (Owens Dec., ¶ 4.) After one year of employment, Plaintiff would have been eligible for retirement benefits, with an employer match of up to \$1,300 per year. (Owens Dec., ¶ 4.)

9. Without admitting the validity or sufficiency of the alleged damages, and assuming a trial within 18 months of April 2, 2021, the amount of alleged back pay, an assumed one year of front pay, along with non-economic compensatory damages, would exceed the jurisdictional amount. See *Bajor v. Wal-Mart Corp.*, No. 08-12401, 2008 WL 3200022, 5-6 (E.D. Mich. Aug. 6, 2008) (plaintiff's ability to recover back pay, reasonable damages for emotional distress and other types of monetary damages exceeded the jurisdictional threshold). Thus, Plaintiff's Complaint contemplates an amount in excess of \$75,000, exclusive of interest and costs.

10. Copies of all process, pleadings, and orders provided to Defendant in this action are attached hereto as Exhibit A pursuant to 28 U.S.C. § 1446(a).

11. In support of this Notice, the Declaration of Tina Jordan, Director of Human Resources, is attached as Exhibit B. The Declaration provides information regarding the citizenship of Defendant and its members, and the amount of Plaintiff's wage rate and benefit cost.

12. Defendant has not yet moved, pled, or otherwise answered Plaintiff's Complaint. Defendant will do so within the time provided by Fed. R. Civ. P. 81(c).

13. A true and accurate copy of this Notice of Removal will be filed with the Circuit Court of Macomb County, Michigan, and will be provided to Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Flex-N-Gate Nine Mile Road, LLC requests the Court enter this case on its docket and entertain such further proceedings herein as may be proper and authorized by law.

Respectfully submitted,

EASTMAN & SMITH LTD.

/s/ Thomas J. Gibney

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**PROOF OF SERVICE**

A copy of the foregoing has been electronically filed on April 30, 2021. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and parties may access this filing through the Court's system.

/s/ Thomas J. Gibney

Attorney for Defendant

Flex-N-Gate Nine Mile Road, LLC